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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,585	03/20/2006	Andreas Specht1er	285783US8X PCT	3391

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EXAMINER	
FEATHERSTONE, MARK D	

ART UNIT	PAPER NUMBER
2623	

NOTIFICATION DATE	DELIVERY MODE
04/22/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/572,585	SPECHTLER ET AL.	
	Examiner	Art Unit	
	MARK D. FEATHERSTONE	4157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *3/20/2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 March 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/20/2006; 7/19/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 35-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With regard to claim 35, a computer program by itself is not statutory subject matter. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process. There must be a computer-readable medium to realize the computer program's functionality.

Claim 36 recites a "computer readable storage means". Applicant does not specifically define in the specification what this consists of. This could be broadly be interpreted as a "signal", which is not statutory subject matter.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19-22, 25-30, and 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al, US PG Pub # 20020133247.

With regard to claim 19, Smith discloses:

Content output device, comprising:

A media player unit adapted to access first content items from a first media source and to provide corresponding first content items as an output ([0011] Smith discusses streaming media content to a media client), wherein:

Said media player unit is further adapted to access at least one second content item from at least one second media source ([0011, Smith discloses requesting a second media stream) and to provide a corresponding at least one second content item as an output when the response to a request for said first content items to be provided from said first media source is negative ([0012; Smith discloses continuing to play the original stream if the second one is not ready to play i.e. the response to play the stream is negative)

With regard to claim 20, Smith discloses:

Content output device according to claim 19, wherein said media player unit comprises a first media player having access to said first content items from said first media source and a second media player having access to said second content items from said second media source ([0013; Smith discloses an embodiment in which there are two media players that each receive a different content stream)

With regard to claim 21, Smith discloses:

Content output device according to claim 19, wherein said first media source is located outside of said content device and is adapted to provide said first content items as a media stream to said media player unit (Figure 1, items 102 and 110; Smith clearly depicts the media server located outside of the media client device; [0028] Smith describes the content as "media streams")

With regard to claim 22, Smith discloses:

Content output device according to claim 21, further comprising a buffer adapted to buffer said first content items provided by said first media source within said media player unit before said media player unit provides said first content items as an output ([0012] Smith describes buffering one or both media streams)

With regard to claim 25, Smith discloses:

Content output device according to claim 19, wherein said second media source is adapted to load or download said second content items from remote (As stated above, Figure 1 clearly depicts a remote media client, which downloads content items from a server)

With regard to claim 26, Smith discloses:

Content output device according to claim 25, wherein at least one second content item is a jingle ([0005]; Smith describes media content as "audio").

With regard to claim 27, Smith discloses:

Content output device according to claim 19, wherein the content output device is adapted to provide said second content items, when provided to a user of the

content output device, from a prepared media file ([0026; Smith discloses a number of different media file types, such as MP3 files, MPEG files, etc.)

Claims 28 is the method of system claim 19, and is rejected as applied.

With regard to claim 29, Smith discloses:

Method according to claim 28, further comprising receiving said first content items of said first media source as a media stream ([0011]; Smith discloses receiving a first media stream)

Claim 30 is the method of system claim 22, and is rejected as applied.

Claim 32 is the method of system claim 25, and is rejected as applied.

Claim 33 is the method of system claim 26 and is rejected as applied.

Claim 34 is the method of system claim 19, and is rejected as applied.

Claim 35 is the computer program product to invoke the steps of claim 28, and is rejected as applied. It is inherent that the system of Smith is driven by computer instructions.

Claim 36 is the computer readable media to store the program of claim 35, and is rejected on this basis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: ***(See MPEP Ch. 2141)***

a. Determining the scope and contents of the prior art;
b. Ascertaining the differences between the prior art and the claims in issue;
c. Resolving the level of ordinary skill in the pertinent art; and
d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

6. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Smith et al, US PG Pub # 20020133247" in view of "Katinsky et al, US Patent # 6452609".

With regard to claim 23, Smith discloses:

Content output device of according to claim 21, however does not disclose the following:

wherein said first media source is adapted to choose said first content items to be provided in dependence on user feedback on first content items provided by said first media source to said media player.

However Katinsky, discloses a sequence of media streams delivered based on a user histories (col.2, lines 58-60).

A person of ordinary skill in the art at the time of invention would have found it obvious to modify the system of Smith with the feature of Katinsky in order to create a media player that plays content based on user likes/dislikes. The advantage of this would have been to provide more targeted content to the user.

7. Claims 24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Smith et al, US PG Pub # 20020133247" in view of "Szybiak et al, US Patent # 7023488".

With regard to claim 24, Smith discloses: an output device according to claim 21, however does not disclose the following: wherein said media player unit is adapted such that a first content item which is provided by said first media source and which is currently output is fadeable out in response to user feedback by the content output device on first content items already provided

However, Szybiak, discloses transitioning between sequences of digital information and further discloses the ability to fade out one stream during a transition (column 4, lines 6-12 Szybiak discloses fading out an audio stream)

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Smith with this feature as it is a well known and commonly used feature in the art. The advantage of this feature is to offer a smooth transition between two digital streams)

Claim 31 is the method of system claim 24, and is rejected on this basis.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK D. FEATHERSTONE whose

telephone number is (571)270-3750. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F US Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E-Signed

/Mark Featherstone/ - Art Unit 2623

/Annan Q Shang/

Primary Examiner, Art Unit 2623